

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FRAZIER INDUSTRIAL COMPANY,

Plaintiff,

vs.

NICKLAUS M. LOGRECCO a/k/a NICK
LOGRECCO, REB STEEL EQUIPMENT
CORP. d/b/a REB STORAGE SYSTEMS
INTERNATIONAL and JOHN DOES, 1-
10,

Defendant.

Civil Action No.

**NOTICE OF REMOVAL
(Diversity)**

(Removed from:

Superior Court of New Jersey

Chancery Division: Morris County

Docket No. MRS-C-68-18)

Defendant Nicklaus M. Logrecco (“Logrecco”), by and through his undersigned counsel, who make this limited appearance with a full reservation of any and all rights, claims, objections and defenses, including, but not limited to the right to seek dismissal of the within action as against Logrecco for lack of personal jurisdiction, hereby files this Notice of Removal from the Superior Court of New Jersey, Chancery Division, Morris County (the “State Court”), in which the action is now pending under Docket Number MID-L-001353-18, to the United States District Court for the District of New Jersey, Newark Vicinage, pursuant to 28 U.S.C. §§ 1332, 1367 1441 and 1446, and respectfully states as follows:

THE REMOVED CASE

1. On or about July 13, 2018, there was commenced by way of Verified Complaint and Order to Show Cause and there is now pending before the State Court a civil action entitled Frazier Industrial Company v. Nicklaus M. Logrecco, et als., Docket No. MRS-C-68-18 (the “State Court Action”). A true copy of the Verified Complaint and exhibits thereto filed in the State Court Action is annexed hereto as Exhibit 1.

2. On or about July 17, 2018, the Honorable Robert J. Brennan, P.J. Ch., entered the Order to Show Cause directing, among other things, that Logrecco and the other named defendants appear before him on August 17, 2018 and show cause why a preliminary injunction should not be entered. Pursuant to the Order to Show Cause, Logrecco's opposition was due on or before Friday, July 27, 2018. A copy of the Order to Show Cause is annexed hereto as Exhibit 2.

3. Logrecco received a copy of the signed Order to Show Cause and Verified Complaint at his residence in the State of Nevada on or about July 26, 2018.

4. Judge Brennan subsequently granted Logrecco and the other Defendants a one (1) week extension of the deadline for filing opposition to the Order to Show Cause.

SUBJECT-MATTER JURISDICTION AND GROUNDS FOR REMOVAL

5. The State Court Action is a civil action removable to this Court pursuant to 28 U.S.C. § 1441 because this Court has original jurisdiction over this action under 28 U.S.C. § 1332(a)(1) based on diversity of citizenship and amount in controversy.

6. Logrecco is and was at relevant times a resident of Nevada, residing at 1377 Grassland Rd., Dayton, NV. See Exh. 1, ¶ 7.

7. As alleged in the Verified Complaint, Plaintiff Frazier Industrial Company ("Frazier") is a New Jersey corporation with its principal place of business in New Jersey. Id. at ¶ 6.

8. Defendant REB Steel Equipment Corp. d/b/a REB Storage Systems International ("REB") is an Illinois corporation with its principal place of business in Illinois. Id. at ¶ 8.

9. Accordingly, the diversity of citizenship requirement is satisfied pursuant to 28 U.S.C. § 1332(a)(1) and (c).

10. Plaintiff asserts in its Verified Complaint that it has been harmed by Logrecco's decision to terminate his employment with Plaintiff and obtain employment with REB, an alleged competitor of Plaintiff, in violation of a certain non-compete agreement signed by Logrecco. See Exh. 1 at ¶¶ 16-48. In the Verified Complaint, Plaintiff asserts a host of claims against Logrecco and REB, including, but not limited to, breach of contract, breach of the implied covenant of good faith and fair dealing, breach of duty of loyalty, unfair competition, civil conspiracy, aiding and abetting, and individual liability. Id. at ¶¶ 49-74(A)-(I).

11. Plaintiff demands permanent injunctive relief and certain compensatory damages on its claims. Id. at ¶¶ 49-74(A)-(I). As it pertains to injunctive relief, Plaintiff seeks permanent restraints enjoining Logrecco from continued employment with REB, restraining Logrecco's pursuit of employment with any of Plaintiff's competitors, and further enjoining REB's solicitation of Plaintiff's past, present or prospective customers, among other requests for relief. Id. at ¶ 74(A)-(I).

12. The monetary effect that a judgment in Plaintiff's favor prohibiting and restraining Logrecco from further employment with REB, or with any other "competitor," together with Plaintiff's demand for compensatory damages and further relief against the defendants, far exceeds \$75,000, exclusive of interests and costs. Thus, the amount in controversy requirement is satisfied pursuant to 28 U.S.C. § 1332(a).

13. This action is, therefore, a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332 and one which may be removed by Logrecco pursuant to 28 U.S.C. §§ 1441(b) and 1446 in that it is a civil action wherein the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states.

THE REMOVAL IS TIMELY AND PROCEDURALLY PROPER

14. Plaintiff filed its Verified Complaint and Order to Show Cause in the State Court on or about July 13, 2018. Judge Brennan entered the Order to Show Cause on July 17, 2018, which Logrecco first received on or about July 26, 2018. Therefore, this Notice of Removal is filed within 30 days of Logrecco's first notice of the lawsuit and less than one year after commencement of the State Court Action. As such, it is timely under 28 U.S.C. § 1446(b).

COPIES OF STATE COURT FILINGS

15. Pursuant to 28 U.S.C. and L. Civ. R. 5.2, in addition to the Verified Complaint and exhibits thereto and the Order to Show Cause for a Preliminary Injunction Pursuant to Rule 4:52 entered by the Honorable Robert J. Berman, P.J. Ch., this Notice of Removal is accompanied by true and correct copies of the following:

- a. Certification of Peter Gofreddo in Support of Order to Show Cause annexed hereto as Exhibit 3; and
- b. Plaintiff's Memorandum of Law in Support of its Application for a Preliminary Injunction annexed hereto as Exhibit 4.

16. To the best of Logrecco's knowledge, Exhibits 1-4 constitute all the process, pleadings, and orders served on Logrecco and all documents filed in the State Court Action.

FILING OF REMOVAL PAPERS

17. Pursuant to 28 U.S.C. § 1446(d), Logrecco concurrently herewith gives written notice of filing of this Notice of Removal to Plaintiff, REB and to the State Court. A copy of that Notice (without the exhibits thereto) is attached as Exhibit 5 to this Notice of Removal.

WHEREFORE, Logrecco hereby removes the State Court Action to this Court for determination and respectfully requests that this Court make and enter an Order of Removal of the State Court Action.

Respectfully submitted,

SCHENCK, PRICE, SMITH & KING, LLP

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*Attorneys for Defendant,
Nicklaus M. Logrecco*

Dated: August 3, 2018

LOCAL RULE 11.2 CERTIFICATION

Pursuant to Local Civil Rule 11.2, the undersigned hereby certifies that, at the time of filing the within, the undersigned is not aware that the matter in controversy is the subject of actions pending in any other court, or of any pending arbitration or administrative proceeding, except as disclosed herein.

SCHENCK, PRICE, SMITH & KING, LLP

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*Attorneys for Defendant,
Nicklaus M. Logrecco*

Dated: August 3, 2018

CERTIFICATE OF SERVICE

On this day, I certify that a copy of the above and foregoing notice was caused to be filed by ECF. I also hereby certify that a true copy of the above and foregoing notice was delivered by Hand-Delivery to:

Clerk of the Superior Court of New Jersey
Morris County Courthouse
Washington & Court Streets
Morristown, New Jersey 07963-0910

I also hereby certify that a courtesy copy of the foregoing notice was delivered by Hand-Delivery to:

Honorable Robert J. Brennan, P.J. Ch.
Morris County Courthouse
Washington & Court Streets, 4th Floor
Morristown, New Jersey 07963-0910

I also hereby certify that a true copy of the above and foregoing notice was delivered by Electronic Mail and Federal Express to:

Rosaria A. Suriano, Esq.
Mark A. Fantin, Esq.
BRACH EICHER, LLC
101 Eisenhower Parkway
Roseland, New Jersey 07068
Attorneys for Frazier Industrial Company

Thomas Johnston, Esq.
JOHNSTON LAW FIRM LLC
75 Midland Avenue, Suite 1
Montclair, NJ 07042
Attorneys for Reb Steel Equipment Corp. d/b/a Reb Storage Systems International

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*Attorneys for Defendant,
Nicklaus M. Logrecco*

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